

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 2165 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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NATVARBHAI ISHWARBHAI PATEL

Versus

HEIRS OF DECEASED NARANBHAI ISHWARBHAI PATEL

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Appearance:

MR SR SHAH for Petitioners

MR. VC DESAI for Respondents 1/1, 1/2 and 1/5

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CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 11/03/96

ORAL JUDGEMENT

1. Rule. Mr. V.C. Desai waives service of rule. Despite service of notice on rest of the respondents, they have not appeared and therefore they are treated as served. With the consent of the learned Advocates appearing for the parties, the matter is finally heard today.

2. By the impugned order passed below Exhibit 144 in Regular Civil Suit No. 165 of 1987 the trial court has

rejected the application of the defendants to exhibit a document during their evidence. The document in question is a writing of effecting partition of the properties between the parties which is reduced into writing in the account book. In fact, by such writing, the properties are divided into three shares and they are specifically earmarked and divided by metes and bounds. The said document, whether should be admitted into evidence or not was the question mainly on the ground it was not a registered a document. The attention of the trial court was unfortunately not drawn to various decisions of the Supreme Court more particularly the decision reported in AIR 1968 SC 1299, Secondly AIR 1955 SC 481 and thirdly AIR 1988 SC 881 and AIR 1988 SC 1365. In light of the observations made by the Court in the aforesaid decisions, the question is required to be asked as to whether the writing itself is a writing of partition whereby on the very day the shares in the properties of co-parceners are determined, properties are divided and earmarked and partition is effected by metes and bounds or the question as to whether the document is in the nature of a mere memorandum of partition which refers to the past note of partition having taken place between the co-parceners. After determining that part, the court has applied the provisions of the Indian Registration Act and has to decide as to whether the document can be admitted into evidence at all and secondly whether it may admitted into evidence for collateral purposes under Section 49 of the said Act. Secondly, the plaintiffs have before this Court raised an additional question, namely, that the document is insufficiently stamped and the plaintiff has permitted to raise such question before the trial court and the trial court shall decide such question also and shall decide as to whether document is admissible in evidence if it is insufficiently stamped. Since the attention of the trial court was not drawn to the aforesaid twin questions and to the binding precedence of the Supreme Court, the judgment and order of the trial court is quashed and set aside and the matter is remanded to the trial court for deciding Exhibit No. 144 afresh after hearing the parties, in view of the observations made hereinabove within six weeks from today. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

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